

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
SIGMA-ALDRICH CO.,)	
)	
Defendant.)	
)	

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), is filing a Complaint concurrently with this Consent Decree, alleging that the Defendant Sigma-Aldrich Co., operating through its division Sigma Chemical Company ("Sigma"), violated the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., at its facility located at 3500 Dekalb Street (the "Dekalb Facility") and its facility located at 3300 South Second Street (the "Cherokee Facility"), in St. Louis, Missouri (collectively, the "Facilities").

The Complaint, pursuant to Section 113, of the CAA, 42 U.S.C. § 7413(b), seeks injunctive relief and civil penalties for alleged violations of the refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.152 - 82.166, ("Recycling and Emission Reduction"), promulgated pursuant to Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q, at the Facilities.

The United States and Defendant have agreed on terms to settle this action. By entering into this Consent Decree, Defendant makes no admission of liability with respect to violations of the

CAA. The United States and Defendant have agreed that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this action.

IT IS, ADJUDGED, ORDERED, and DECREED THAT:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).
2. Defendant does not contest the Court's jurisdiction over this action or over Defendant and does not contest venue in this judicial district.
3. Notice of the commencement of this action has been given to the air pollution control agency for the State of Missouri. 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding on both the United States and on the Defendant, its assigns, and successors.
5. At least thirty (30) days prior to transferring ownership or operation of one of both of the Facilities to any other person, Defendant must provide a copy of this Consent Decree to each prospective successor owner or operator. No transfer will relieve Defendant of its obligations to ensure that the terms of this Consent Decree are implemented, including but not limited to, ensuring that each appliance listed on Attachment "A" is retrofitted or retired in accordance with Section "VIII" ("Compliance Requirements") of this Consent Decree.
6. Defendant must provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent

Decree, as well as to any contractor retained to perform work required under this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant may not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CAA or in the regulations promulgated pursuant to the CAA, will have the meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

- a. "Appliance" means a device as defined at 40 C.F.R. § 82.152.
- b. "Complaint" means the Complaint filed by the United States in this action.
- c. "Consent Decree" means this document and all Attachments.
- d. "Day" means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business the next business day.
- e. "Defendant" means Sigma-Aldrich Co., operating through its division Sigma Chemical Company.
- f. "Dual-Loop System" means an Appliance in which the "primary loop," (i.e., the condenser end), contains an ODS refrigerant and the "secondary loop," (i.e., the product end) contains only a Non-ODS refrigerant (e.g., glycol, water, ammonia, etc.).

- g. "Effective Date" means the date of entry of this Consent Decree by the Court.
- h. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- i. "Facility" means a discrete parcel of real property or such a parcel improved by Defendant's buildings, factory, plant, premises, or other thing, at which Defendant operates its business, containing at least one IPR Appliance.
- j. "Industrial Process Refrigeration Appliance" or "IPR" means any appliance that contains more than fifty (50) pounds of an ODS Refrigerant. The term does not include "Non-ODS systems", or appliances used for comfort cooling.
- k. "Non-Ozone Depleting Refrigerant" or "Non-ODS Refrigerant" means any refrigerant that is (i) approved by EPA for the end use of the appliance, and (ii) is not an ODS Refrigerant.
- l. "Non-ODS System" means any cooling system that (i) contains only a Non-ODS refrigerant or (ii) is a "dual-loop" system as defined in this Consent Decree; or (iii) is an appliance that contains no refrigerant and does not require a refrigerant. If Defendant later decides to operate the appliance(s) with refrigerant, then the refrigerant used must be a refrigerant referenced in (i) or (ii) of this sub-paragraph.
- m. "ODS Refrigerant" means a Class I or a Class II substance as defined in 40 C.F.R. § 82.3, or a blend of Class I or Class II substances.
- n. "ODS System" means any cooling system that is not a Non-ODS System as defined in this Consent Decree.
- o. "Paragraph" means a portion of this Consent Decree identified by an arabic numeral.
- p. "Parties" mean the United States and Defendant.

q. "Refrigerant Management Plan" is the Sigma Plan referred to in Paragraph 20 of this Consent Decree.

r. "Retire" or "retirement" means the permanent removal of an "Industrial Process Appliance" from service, together with the proper removal of all refrigerant from the appliance.

s. "Retrofit" means a designed change (i.e., conversion) of an appliance from an ODS System to a Non-ODS system.

t. "Section" means a portion of this Consent Decree identified by a roman numeral.

u. "United States" means the United States of America, acting on behalf of EPA.

v. The "Six Appliances" means the appliances listed on Attachment "A" of this Consent Decree.

IV. DEFENDANT

9. Defendant is, or at all times relevant to this matter was, the owner and operator of the two Facilities previously identified as located at 3500 Dekalb Street (the "Dekalb Facility") and located at 3300 South Second Street (the "Cherokee Facility") in St. Louis, Missouri, as well as the owner and operator of the Six Appliances set forth on Attachment "A".

10. Defendant is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

V. CIVIL PENALTY

11. Defendant must pay to the United States a civil penalty in the amount of one hundred eighty thousand dollars (\$180,000) in settlement of the claims alleged in the United States' Complaint. Payment will be made pursuant to the provisions of Paragraph 13 within twenty one (21) days ("the due date") after the Effective Date.

12. No portion of the civil penalty paid pursuant to this Consent Decree may be used to reduce Defendant's federal or state tax obligations.

13. The payment to the United States must be by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice Lockbox Bank referencing the civil action number of this case, and Department of Justice case number 90-5-2-1-06469. Payment must be made in accordance with instructions provided by the United States to Defendant upon entry of the Consent Decree, which will include the name of the receiving bank, the amount to be transferred, the Department of Justice account number, the name of the payee, the U.S. Attorney's case number, and the EPA's facility number. Any EFTs received after 11:00 a.m. (EST) will be credited on the next business day. Copies of all documents accompanying the FedWire transfer and a transmittal letter referencing the Department of Justice case number, 90-5-2-1-06469, must simultaneously be mailed to the following persons:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

EPA Headquarters:

Chief, Stationary Source Enforcement Branch
Headquarters U.S. EPA, OECA, Air Enforcement Division
Mail Code 2242A
1200 Pennsylvania Avenue N. W.
Washington, D.C. 20460

EPA Region VII:
CFC Coordinator
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

U.S. Attorney's Office:
Suzanne J. Gau
Assistant United States Attorney
111 S.10th Street - 20th Floor
St. Louis, MO 63102

VI. INTEREST

14. Interest on any outstanding balance of principal will accrue at the statutory rate set forth in 28 U.S.C. § 1961 from the due date through the date of full and complete payment.

VII. DEFAULT

15. In the event that it becomes necessary to enforce the terms of this Consent Decree, and should Defendant subsequently be determined to have violated those terms, Defendant will be liable to the United States for any reasonable attorney's fees, whether suit be brought or not, and all other costs and expenses actually and reasonably incurred by the United States in connection with the enforcement of the terms of this Consent Decree.

16. This Consent Decree will be considered an enforceable judgment against Defendant for purposes of post-judgment collection under Federal Rule 69, Federal Rules of Civil Procedure, and other applicable statutory authority without further order of this Court.

VIII. COMPLIANCE REQUIREMENTS

17. Consistent with the terms of this Consent Decree, Defendant must retrofit or retire all six of the IPRs listed on Attachment "A" of this Consent Decree. Defendant must complete this Retrofit or Retirement no later than the following: appliances 3LYP-0001-CU01 through

CU04 no later than two (2) months from the date the Consent Decree is entered; appliance 1CH-0007-CU01 no later than six (6) months from the date the Consent Decree is entered; and appliance 3LYP-0010-CU01 no later than twelve (12) months from the date the Consent Decree is entered.

18. No IPR listed on Attachment "A" may be removed from one Facility and reinstalled at that same Facility or at any other Facility without first being retrofitted prior to its reinstallation. Once retired, no appliance can be returned to service.

19. Defendant must at all times comply with the regulations set forth at 40 C.F.R. Part 82, Subpart F.

20. Defendant will implement a Refrigerant Management Plan. Defendant must implement the Refrigerant Management Plan no later than twenty (20) days from the date this Consent Decree is entered.

21. Where any compliance obligation required to be met under this Section requires a federal, state, or local permit or approval, Defendant must submit timely and complete applications and take all other actions necessary to obtain all permits or approvals. Defendant may seek relief under the provisions of Section "XI" ("Force Majeure") of this Consent Decree for any delay in the performance of any obligation resulting from a failure to obtain, or a delay in obtaining, any permit required to fulfill any obligation.

IX. REPORTING

22. Beginning on December 1, 2004, Defendant must submit a semiannual progress report ("Semiannual Report") to the United States. Semiannual Reports must be submitted on June 1 and December 1 of each year during the life of this Consent Decree. Each Semiannual

Report must contain the following for the six-month period ending 30 days before the report is due: a description of the activities undertaken to comply with the requirements of Section "VIII" ("Compliance Requirements").

23. Each Semiannual Report and any other document required to be submitted pursuant to the terms of this Consent Decree must contain a certification signed by a responsible corporate officer of Defendant. The certification must read:

"I, _____, certify under penalties of law that the information contained in or accompanying this (submission/document) is true, accurate, and complete. As to the identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official with supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate, and complete."

X. STIPULATED PENALTIES

24. Subject to the Force Majeure and Dispute Resolution provisions of this Consent Decree, Defendant must pay Stipulated Penalties in the amounts set forth below for each failure to comply with the requirements of this Consent Decree. "Compliance" includes payment of the civil penalty, together with any accrued interest, and completion of the Compliance Requirements set forth in Section "VIII" of this Consent Decree within the specified time schedules established by and approved under this Consent Decree. "Compliance" also includes the timely reporting under Section "IX" of this Consent Decree.

25. The following Stipulated Penalties will accrue per violation per day for any noncompliance with the provisions of Sections "V", "VI", "VII" and "VIII" of this Consent Decree. Violations on separate appliances constitute separate violations.

<u>Period of Failure to Comply:</u>	<u>Penalty Per Violation Per Day:</u>
1st through 30 th day	\$250.00
31 st through 60 th day	\$500.00
61 st day and beyond	\$1,000.00

26. For violations of Section "IX", Stipulated Penalties will accrue at a rate of \$100 per day for the first thirty (30) days, and \$250 per day thereafter.

27. Stipulated Penalties are due and payable when the United States makes a demand for payment. Stipulated Penalties are payable in accordance with the following Paragraphs.

28. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due under this Consent Decree.

29. Notwithstanding the date of any demand for Stipulated Penalties, all Stipulated Penalties will begin to accrue on the day after the performance is due or on the day the violation occurs, whichever is applicable. Stipulated Penalties will continue to accrue until performance is completed or until the violation ceases. Nothing herein will prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

30. Stipulated Penalties will continue to accrue as provided in this section during any Dispute Resolution, with interest in accordance with Paragraph 14, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, accrued Stipulated Penalties determined to be due, together with accrued interest, must be paid to the United States within thirty (30) days of the effective date of the agreement or the receipt of the United States' decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant must, within sixty (60) days of receipt of the Court's decision or order, pay all accrued Stipulated Penalties determined by the Court to be due, together with accrued interest, except as provided in Subparagraph c, below;

c. If the Court's decision is appealed by any Party, Defendant must, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued Stipulated Penalties determined to be owing to the United States, together with accrued interest.

31. All Stipulated Penalties must be paid within thirty (30) days after the United States makes a demand for payment. Stipulated Penalties due the United States must, as directed by the United States, be paid by Electronic Funds Transfer ("EFT"), or by certified or cashier's check in the amount due payable to the "United States Department of Justice," referencing DOJ No. 90-5-2-1-06469 and United States Attorney's Office file number 2000v85, and delivered to the office of the United States Attorney, Eastern District of Missouri, Thomas F. Eagleton U.S. Court House, 111 South 10th Street, Room 20.333, St. Louis, MO 63102.

32. Defendant must pay interest on any balance of Stipulated Penalties not paid within the time provided in Paragraphs 30 and 31. Interest on Stipulated Penalties will be computed as provided for in 28 U.S.C. § 1961. The United States is entitled to recover the costs (including attorneys fees) incurred in any action necessary to collect any Stipulated Penalties or interest thereon.

33. Subject to the provisions of Section "XV" ("Effect of Settlement/Reservation of Rights"), the Stipulated Penalties provided for in this Consent Decree are in addition to any other rights, remedies, or sanctions available to the United States by reason of Defendant's failure to

comply with any requirement of this Consent Decree or applicable law, except for any violation of relevant statutory or regulatory requirements for which this Consent Decree also provides for payment of a Stipulated Penalty, the United States will elect whether it will seek Stipulated Penalties or statutory penalties for such violation.

XI. FORCE MAJEURE

34. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential Force Majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

35. Examples of events that are not Force Majeure include, but are not limited to, inclement weather (other than flood, tornado, hurricane or other similar natural disasters), unanticipated or increased costs or expenses of work, financial difficulties encountered by Defendant in performing such work, and the failure of Defendant or its representatives including contractors to make complete and timely application for any required approval or permit.

36. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which Defendant intends to assert a claim of Force Majeure, Defendant must provide notice in writing, as provided in Section "XVII" ("Notices") of this Consent Decree, within ten (10) days of the time Defendant first knew of, or by the exercise of

due diligence should have known of, the event. Notification must include an explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Defendant's rationale for attributing the delay to a Force Majeure event. Failure to comply with these requirements will preclude Defendant from asserting any claim for Force Majeure.

37. Defendant has the burden of proving, by a preponderance of the evidence, that an event was a Force Majeure event; that Defendant gave the notice required by the preceding Paragraph; that Defendant took all reasonable steps to prevent or minimize any delay caused by the event; and that any period of delay Defendant's claim was attributable to the Force Majeure event was caused by that event.

38. EPA will notify Defendant in writing of its agreement or disagreement with Defendant's claim of a delay or impediment to performance within thirty (30) days of receipt of the notice provided under Paragraph 36. If EPA agrees that Defendant could not have prevented or mitigated any delay, or anticipated delay, attributable to a Force Majeure event by the exercise of due diligence, EPA will notify Defendant in writing of its agreement to an extension of time for Defendant's performance of the affected compliance requirement by a period not exceeding the delay actually caused by the event.

39. In the event the Parties cannot agree that Defendant could not have prevented or mitigated any delay, EPA's determination will govern unless Defendant invokes formal Dispute Resolution pursuant to Section "XII" of this Consent Decree within fourteen (14) days after EPA's notification. An extension of time for performance of one or more obligations affected by

a Force Majeure event will not, of itself, extend the time for performance of any other obligation.

40. Stipulated Penalties will not be due for the number of days of noncompliance determined by EPA to be caused by a Force Majeure event as defined in this Section.

XII. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedure of this Section is the exclusive mechanism to resolve all disputes arising under this Consent Decree, except as otherwise provided in Section "XI" ("Force Majeure"). The procedures set forth in this Section do not apply to actions by the United States to enforce Defendant's obligations that have not been disputed in accordance with this Section.

42. Any dispute which arises under or with respect to this Consent Decree will in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations may not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute will be considered to have arisen when one party sends the other party a written Notice of Dispute.

43. If the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA will be considered binding unless, within fourteen (14) days after the conclusion of the informal negotiations period, Defendant invokes the formal Dispute Resolution procedures by serving on the United States, in accordance with Section "XVII" ("Notices") of this Consent Decree, a written Statement of Position on the matter in dispute, including, but not limited to, any supporting factual data, analysis, opinion, or documentation.

44. Within fourteen (14) days after receipt of Defendant's Statement of Position, the United States will serve on Defendant its Statement of Position, including any supporting factual data, analysis, opinion or documentation. Within fourteen (14) days after receipt of the United States' Statement of Position, Defendant may submit a reply.

45. An administrative record of the dispute must be maintained by EPA and must contain all statements of position, including supporting documentation, submitted pursuant to this Section. That record, together with other appropriate records maintained by EPA or submitted by Defendant, will constitute the administrative record upon which the matter in dispute is to be resolved.

46. The Director of the Air Enforcement Division, OECA ("Director"), or a properly designated representative, will issue a final decision resolving the dispute. Where the dispute pertains to the performance of the Compliance Requirements under Section "VIII" of this Consent Decree, or is otherwise accorded review on the administrative record under applicable principles of administrative law, the decision will be upon the administrative record maintained by EPA pursuant to Paragraph 45. The decision of the Director will be binding on Defendant, subject only to the right to seek judicial review, in accordance with Paragraph 47 below.

47. The decision issued by EPA under Paragraph 46, may be reviewed by this Court upon a motion filed by Defendant and served upon the United States within fourteen (14) days of receipt of EPA's decision.

48. In any judicial proceeding pursuant to Paragraph 47, that concerns the performance of the Compliance Requirements under Section "VIII" of this Consent Decree, or is otherwise accorded review on the administrative record under applicable principles of administrative law,

Defendant will have the burden of demonstrating that the decision of the Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of any decision will be on the administrative record compiled in accordance with Paragraph 45. In all other disputes Defendant will bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the CAA.

49. The invocation of formal Dispute Resolution procedures under this Section will not extend, postpone or affect in any way any obligation of Defendant under this Consent Decree, not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter will continue to accrue from the first day of noncompliance, but payment will be stayed pending resolution of the dispute as provided above. In the event that Defendant does not succeed on the disputed issue, Stipulated Penalties will be assessed and paid as provided in Section "X" ("Stipulated Penalties").

XIII. INFORMATION COLLECTION AND RETENTION

50. The United States and its representatives, including attorneys, contractors, and consultants, will have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

- a. Monitor the progress of activities required under this Consent Decree;
- b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. Assess Defendant's compliance with this Consent Decree and its Attachments.

51. Until the termination of this Consent Decree, Defendant must retain, and must instruct its contractors and agents to preserve, all nonidentical copies of all records and

documents (including documents in electronic form) now in its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record retention requirement will apply regardless of any corporate document-retention policy to the contrary.

52. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendant must notify the United States, at least ninety (90) days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States, Defendant must deliver any such records or documents to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law.

53. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits.

XIV. FAILURE OF COMPLIANCE

54. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. § 7401, et seq., namely, Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q. Notwithstanding the United States' review and approval of any document(s) submitted to it by Defendant pursuant to this Consent Decree, Defendant will remain solely responsible for compliance with the terms of the CAA and this Consent Decree.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

55. This Consent Decree resolves the claims of the United States for civil penalties for the violations alleged in the Complaint, through the date of lodging of this Consent Decree.

56. Nothing in this Consent Decree is intended to operate in any way to resolve any other civil claims or any criminal liability of Defendant.

57. Neither this Consent Decree, nor any requirement hereunder, is to be interpreted to be a Permit, or a modification of an existing Permit, issued pursuant to the CAA, 42 U.S.C. § 7401 et seq., nor will it in any way relieve Defendant of its obligation to obtain a Permit and comply with the requirements of any Permit or with any other applicable Federal or State, and local statutes and regulations.

58. This Consent Decree may not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the CAA, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

59. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations, and permits. Defendant's compliance with this Consent Decree is not a defense to any action commenced pursuant to said laws, regulations, or permits.

60. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

61. This Consent Decree may not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

62. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

XVI. COSTS

63. The Parties will each bear their own costs of litigation of this action, including attorneys' fees, except as provided in Paragraphs 15 and 32.

XVII. NOTICES

64. Except as otherwise provided in this Consent Decree, whenever written notifications, submissions, or communications to the United States or to the Defendant are required by this Consent Decree, they must be made in writing and addressed as follows:

As to the United States and EPA:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

and

CFC Coordinator
U.S. EPA, Region VII
901 N. 5th Street
Kansas City, Kansas 66101

and

Suzanne J. Gau
Assistant United States Attorney
Thomas F. Eagleton U.S. Court House
111 South 10th Street Room 20.333
St. Louis, Missouri 63102

As to Defendant:

Robert F. Wilkinson
Husch & Eppenger LLC
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105-3441

and

Jerome Kaskowitz
Blumenfeld, Kaplan & Sandweiss, PC
168 N. Meramec
Suite 400
St. Louis, MO 63105

65. A notice submitted pursuant to this Section will be deemed timely if it is correctly addressed and postmarked on or before the date the notice is due, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVIII. EFFECTIVE DATE

66. The Effective Date of this Consent Decree will be the date on which this Consent Decree is entered by the Court.

XIX. RETENTION OF JURISDICTION

67. The Court will retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section "XII" ("Dispute Resolution") of this Consent Decree.

XX. MODIFICATION

68. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it will be effective only upon approval by the Court. The terms and schedules contained in Section VIII ("Compliance Requirements") of this Consent Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects Defendant's ability to meet the objectives of this Consent Decree.

XXI. TERMINATION

69. Upon approval by the Court, the Consent Decree will terminate on the latest of the following: (1) five years after entry of the Consent Decree; or (2) the date on which EPA determines that Defendant has satisfactorily completed the compliance program specified in Section "VIII" ("Compliance Requirements") of this Consent Decree. In the interim, this Court will retain jurisdiction to enforce the Parties' rights and obligations under this Consent Decree. Nothing contained in this Consent Decree limits the power of the Court to issue such orders or directions as may be necessary to implement, enforce or modify the terms of this Consent Decree or to provide such further relief as the interests of justice may require.

70. If after at least five years from the entry of the Consent Decree the Parties agree that Defendant has satisfactorily complied with the requirements of the Consent Decree and that all other requisite conditions for termination of the Consent Decree have been satisfied, they may file with the Court an appropriate pleading so notifying the Court and requesting termination of the Consent Decree.

71. If after at least five years from the entry of the Consent Decree the Parties do not so agree, Defendant may, subject to the provisions of Paragraph 69, serve upon the United States and file with the Court a "Motion for Termination of Consent Decree" ("Motion"), with supporting documentation demonstrating that the criteria in Paragraph 69 have been met.

72. The United States will have the right to oppose Defendant's Motion. If the United States opposes termination of the Consent Decree, Defendant will have the burden of proof by clear and convincing evidence that Defendant has satisfactorily complied with the requirements of the Consent Decree and that all other requisite conditions for termination of the Consent Decree have been satisfied.

XXII. PUBLIC PARTICIPATION

73. This Consent Decree will be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 42 U.S.C. § 7413(g) and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

XXIII. SIGNATORIES/SERVICE

74. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents.

75. This Consent Decree may be signed in counterparts, and such counterpart signature pages will be given full force and effect.

76. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

77. Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements of Rule 4 of the Federal Rules of Civil Procedure ("FRCP") and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

78. This Consent Decree and the attached Attachment "A" constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersede all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor can it be used in construing the terms of this Consent Decree.

XXV. FINAL JUDGMENT

79. Upon approval and entry of this Consent Decree by the Court, this Consent Decree will constitute a final judgment of the claims settled herein.

IT IS SO ORDERED THIS _____ day of _____, 2004.

United States District Judge

FOR THE UNITED STATES OF AMERICA
UNITED STATES DEPARTMENT OF JUSTICE:

8/13/04
DATED:

CATHERINE R. MCCABE
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division

8/10/04
DATED:

PAUL STOKSTAD
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

THE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF MISSOURI:

JAMES G. MARTIN
United States Attorney
Eastern District of Missouri

7-15-04
DATED:

By:

Suzanne J. Gau /
Assistant United States Attorney
Thomas F. Eagleton U.S. Court House
111 South 10th Street
Room 20.333
St. Louis, Missouri 63102

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATED:

THOMAS SKINNER
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

DATED:

JAMES B. GULLIFORD
Regional Administrator

DATED:

MARTHA R. STEINCAMP
Regional Counsel
Region VII
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, KS 66101

FOR SIGMA-ALDRICH CO.:

7/14/04
DATED:

President
Sigma-Aldrich Co.

7/13/04
DATED:

ROBERT F. WILKINSON
Attorney for Sigma-Aldrich Co.
Husch & Eppenberger LLC
190 Carondelet Plaza
Suite 600
St. Louis, MO 63105-3441

ATTACHMENT "A"
TO CONSENT DECREE

United States of America v. Sigma-Aldrich Co.

- (1) 1CH-0007-CU01
- (2) 3LYP-0001-CU01
- (3) 3LYP-0001-CU02
- (4) 3LYP-0001-CU03
- (5) 3LYP-0001-CU04
- (6) 3LYP-0010-CU01